GENERAL MANAGER, KERETAPI TANAH MELAYU v. VEERIAH

[F.C. (Gill C.J., Ali and Ong Hock Sim F.JJ.)
December 3, 1974]
[Kuala Lumpur — Federal Court Civil Appeal No. 21 of 1974]

Administrative Law — Claim that person had been prematurely and unlawfully retired — Statement as to age given at time of joining service — Application to have date of birth amended — Application turned down — Whether person entitled to take action against Railway authority — Whether employees of Malayan Railway are in the service of the Government of the Federation — Application of General Orders — General Orders A 19(d) and 19(e) — Railway Ordinance, 1948, s. 4(1A) — Federal Constitution, art. 132.

In this case the respondent had declared at the time of his joining the Railway service on 19 February 1941 that his date of birth was 26 June 1916. On that basis he was compulsorily retired from service on attaining the age of 55 on 26 June 1971. The respondent claimed that his correct date of birth was 21 June 1921. He obtained authenticated documents from India relating to his actual date of birth and on the presentation of these documents to the Registrar of Identity Cards, his identity card was amended to show the date of birth. He applied to the Principal Establishment Officer to have his date of birth amended but his application was turned down. He thereupon applied to the High Court for a declaration that he had been prematurely and unlawfully retired before his retiring age of 55 and in the High Court, Mohamed Azmi J. made the declaration and ordered that he be reinstated in his employment ([1974] 1 M.L.J. 201). On appeal,

Held: (1) by virtue of section 4(1A) of the Railway Ordinance, 1948, the respondent being in the service of the Railway Administration is deemed to be in the service of the Government of the Federation and therefore General Orders are applicable to him;

(2) under General Order A 19(e) the Principal Establishment Officer has absolute discretion in determining the application for amendment of the date of birth and if the respondent was dissatisfied with his decision in the exercise of such discretion, it was open to him to take proceedings against the Government; in the absence or his having failed to take such proceedings he had no right of action against the appellant;

(3) under General Order 19(d) the respondent was bound by his statement which he made as to his date of birth when he was appointed to the railway service.

FEDERAL COURT.

K. Thayalam for the appellant.

R. Ponnudurai for the respondent.

Gill C.J. (delivering the judgment of the Court): This was an appeal by the defendant in the action from a judgment of Mohamed Azmi J. whereby it was declared that the respondent, plaintiff in the action, had been prematurely and unlawfully retired before his retiring age of 55 on the erroneous ground that he had reached that age on 25th June 1971, and that his correct age on that date was 50 years. There was also an order made that he be reinstated in his lawful and substantive appointment from 26th June 1971.

The plaintiff's case as set out in his statement of claim was as follows. At the time of joining the service he had erroneously stated his age as 25 years from memory. In or about September 1970 he had obtained authenticated documents from India relating to his actual date of birth which showed that he was born on 2nd June 1921. On the presentation of these documents to the Registrar of Identity Card, his actual date of birth was inserted in his identity card No. 9990530. But in spite of repeated requests, the defendant had deliberately refused to accept his amended date of birth.

The defence to the action very briefly was that the defendant was entitled, and indeed obliged by law, to require the plaintiff to retire from service at the age of fifty-five years as shown by the plaintiff's record of service card.

No evidence was called by either party at the trial of the action, but they put in an agreed bundle of documents which was marked as an exhibit. These documents showed that the plaintiff was born in India and was brought to this country by his uncle when he was about 7 years old. He obtained employment with the then Federated Malay States Railways (now the Malayan Railway) as a fitter on 19th February 1941 when he stated his date of birth to be 26th June 1916. This was entered as his date of birth in his service record which was duly thumb printed by him, and on that basis he was compulsorily retired from service under section 10(a) of the Pensions Ordinance 1951 on attaining the age of 55 on 26th June 1971.

The plaintiff has been informed by a letter dated 12th August 1970 from his head of department that he would be required to stop work on his attaining the age of 55 on 26th June 1971, after taking all leave to which he was entitled. Some time prior to 18th March 1971 the plaintiff had obtained from India a Birth Certificate No. 127516 together with two statutory declarations presumably to the effect that the birth certificate related to him. On that date he sent these documents to the High Commissioner for India in Kuala Lumpur with a request that his name be inserted in the birth certificate and that he be given a letter of confirmation that the birth certificate referred to him. In due course he received a letter dated 15th September 1970 from the Indian High Commission to say that it had been confirmed after verification by the authorities in India that the birth certificate related to him and that he was actually born in the village of Keelakandu, and his documents were returned to him. On the strength of these documents he had his date of birth amended from 26th June 1916 to 2nd June 1921 in his identity card, his E.P.F. membership card and his citizenship certificate.

On 31st March 1971 the respondent wrote to his head of department to apply for amendment of the date of birth in his record of service. His head of department advised him to write a letter through the proper channel to the General Manager of Malayan Railway, the defendant, for consideration. By a letter dated 27th May 1971 he was required to submit the original translation of his birth certificate, copy of identity card, membership card of the Employees Provident Fund and certificate of citizenship so that his application could be forwarded to the Director General of Public Services Malaysia for consideration. He duly complied with this request. By a letter dated 12th July 1971 he was informed by the Chief Mechanical Engineer, Sentul Workshop that his application for change of his date of birth had not been approved by the Director General of Public Services Malaysia, and all his documents were returned to him. Thereafter he carried on further correspondence in the

matter with his head of department, but the Director-General of Public Services finally ruled by his letter dated 14th October 1971 that his application for amendment of his date of birth was not approved.

At the trial of the action counsel for the defendant conceded that the applications of some other employees of the defendant for alterations of their dates of birth were approved by the Public Services Department under General Order 19(e) of Cap. A which reads as follows:

"(e) An officer appointed prior to 1st February, 1957, may be allowed to amend his recorded age on production of an acceptable birth certificate. A birth certificate in the following cases may be accepted at the discretion of the Principal Establishment Officer provided that other reliable documentary evidence is furnished that the birth certificate refers to the officer concerned:

(i) where the name on the birth certificate differs from that used by the officer, and

(ii) in the case of officers born outside the Federation of Malaya, where no name is shown on the birth certificate.

... ... "

Counsel for both parties said that there were no disputes about the facts of the case, including the fact that the plaintiff was born on 2nd June 1921, so that the only issue before the court was whether at that late stage the plaintiff was estopped from asserting his actual date of birth without having succeeded in getting it entered on his record of service card under G.O.A. 19(e). Thus the defence raised was one of estoppel under section 115 of the Evidence Act, 1951.

Counsel for the defendant submitted that from the time of his first employment in 1941 the plaintiff had asserted all along that he was born on 26th June 1916. He was informed by letter dated 12th August 1970 that he would be retired on his attaining the age of 55 on 26th June 1971, and he did not take any action until 31st March 1971 to have his date of birth amended. The plaintiff had thus done nothing for nearly 30 years. Counsel for the plaintiff argued that the plaintiff was not estopped from asserting his actual date of birth about which in fact there was no dispute, and that as there was no maximum age limit for entry into service when he applied for the job in 1941 there was no reason for the plaintiff to mislead the defendant.

Having heard arguments from both sides, the learned judge held that the defence of estoppel was not available to the defendant. He pointed out that for estoppel to apply the person claiming the benefit of it must show that he was not aware of the true state of things, and that if he was aware of the real state of things, or had means of such knowledge, there could be no estoppel. In the present case, however, both parties had knowledge of the plaintiff's date of birth, and it so appeared on the face of the proceedings. He further said that he could not understand why the plaintiff's application was turned down by the Services Department when other similar applications had been allowed, especially when other Government agencies such as the Registration Department in charge of Identity cards and Citizenship had allowed the plaintiff's date of birth to be amended. He also took the view that the plaintiff's representation as to his date of birth as recorded in his service card was made innocently and mistakenly. In the result he made the declarations and the order from which this appeal was brought to this court.

The main argument in support of the appellant's appeal before us was that the action was premature in that before commencing the action the plaintiff had not obtained approval from the Principal Establishment Officer (now known as the Director-General of Public Services) under G.O.A. 19(e) for his date of birth to be amended. Counsel for the respondent took the point that G.O.A. 19(e) did not apply to the respondent as an employee of the Malayan Railway. We did not agree with this point because Article 132(1)(e) of the Constitution of Malaysia stipulates the Railway Service to be one of the Public Services for the purposes of the Constitution. Article 132(2) provides that the conditions of service of persons in the public services other than the public service of each State may be regulated by Federal law. Section 4(1A) also provides that any person in the service of the Railway Administration shall, except where otherwise expressly provided by any other written law, be deemed to be in the service of the Government of the Federation. It would thus seem clear that the General Orders which are promulgated by the Yang Dipertuan Agung in accordance with Article 132 of the Constitution do apply to employees of the Malayan Railway.

The respondent did in fact apply to the Principal Establishment Officer to have his date of birth amended and the application was clearly made under G.O.A. 19(e), but his application was turned down. He applied again with the same result. Under the General Order in question the Principal Establishment Officer has absolute discretion in the matter. If the respondent was dissatisfied with his decision in the exercise of such discretion, it was open to him to take whatever proceedings he considered appropriate against the Government. In the absence or his having failed to take any such proceedings he had no right of action against the appellant. Perhaps it would be pertinent to refer to G.O. 19(d) which reads as follows: —

"(d) A candidate for appointment to the public service should be asked to produce a birth certificate. If a birth certificate cannot be produced, the candidate should be asked to state his age, be advised of the importance of his statement, and be required to sign or thumbprint the records as a final statement by which he will be bound thereafter."

This would seem to indicate that the respondent was bound by his statement which he made as to his date of birth when he was appointed to the railway service.

In the result, we allowed the appeal, set aside the order of the court below and made an order that the suit do stand dismissed. In all the circumstances of the case we made no order as to costs of the appeal.

Appeal allowed.

Solicitors: *Skrine & Co.; Rajendra & Teik Ee.*